

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER C. W. BURT

Appeal No. 2001-0471
Application 09/379,492

HEARD: April 26, 2001

MAILED

MAY 15 2001

**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

Before CALVERT, COHEN, and STAAB, Administrative Patent Judges.
CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 20 to 36, all the claims remaining in the application.

The subject matter in issue is defined by the two independent claims on appeal, 20 and 27, as follows:

20. An aerosol dispenser comprising a body, a closure sealed to the body, and means for dispensing material from the interior of the dispenser, wherein the closure is welded ultrasonically to the body by a metal-to-metal weld.

Appeal No. 2001-0471
Application 09/379,492

27. A method of assembling an aerosol dispenser comprising a metal body, a metal closure, and means for dispensing material from the interior of the dispenser, wherein the closure is welded ultrasonically to the body by a metal-to-metal seal.

A copy of the claims on appeal is contained in the appendix of appellant's brief.

The references applied in the final rejection are;

Ryden	3,622,053	Dec. 10, 1969
Mascia et al. (Mascia)	4,341,330	Jul. 27, 1982
Welter	4,749,437	Jun. 7, 1988
Beard et al. (Beard)	4,919,312	Apr. 24, 1990

An additional reference referred to herein is:

Goncalves (France)	2,543,923	Oct. 12, 1984 ¹
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The appealed claims stand finally rejected as unpatentable under 35 U.S.C. § 103(a) over the following combinations of references:²

(1) Claims 20, 21, 23, 25, 27 to 29, 31 and 33 to 35, Beard in view of Welter;

(2) Claims 22, 24, 30, 32 and 36, Beard in view of Welter and Mascia;

¹ This reference was cited in an Information Disclosure Statement filed in grandparent application 08/481,392. A copy of the abstract is enclosed herewith.

² The examiner states on page 2 of the answer that rejections on the ground of same-invention and obviousness-type double patenting have been overcome.

(3) Claim 26, Beard in view of Welter and Ryden.³

First considering independent claims 20 and 27, the examiner's position is, in essence, that it would have been obvious to ultrasonically weld the joint between the body 12 and closure 11 of the Beard aerosol dispenser, instead of crimping their perimeters 2, 3 together as shown, in view of Welter's teaching of ultrasonic welding. After fully considering the record in light of the arguments presented in appellant's brief and in the examiner's answer, we conclude that the rejection is not well taken.

Claims 20 and 27 both require that the closure be welded to the body by a "metal-to-metal" weld or seal. In the Beard container, a polypropylene layer 5 is provided on the inner surface of the closure 11; this layer not only allows heat sealing of the flange 14 of the valve to the closure 11, but also is "available to aid in forming a seal between the perimeter portion 3 of the cup 11 and the mouth 2 of the container 12" (col. 3, lines 59 to 62). Thus, as appellant argues at page 7 of the brief, Beard does not disclose metal-to-metal contact between

³ Since claim 26 depends from claim 20, it is evident that the omission of Welter from the statement of this rejection in the final rejection and examiner's answer was an inadvertent error.

Appeal No. 2001-0471
Application 09/379,492

body 2 and closure 3 because polymer layer 5 is interposed between them, and the "metal-to-metal" limitation of claims 20 and 27 would not be met even if items 2 and 3 of Beard were ultrasonically welded, since there is no teaching or suggestion to eliminate the polymer layer 5 between items 2 and 3. We note that the examiner has not responded to this argument.

The Mascia and Ryden references do not overcome the above-noted deficiency in the combination of Beard and Welter.

The rejections of claims 20 to 36 therefore will not be sustained.

Remand to the Examiner

We glean from the abstract and drawings of the above-cited Goncalves (French) reference that it discloses an aerosol container having a metal body 2 and closure 3, the body and closure being joined by welding together interengaging flanges 7, 9 on each of them, using a laser beam (Fig. 2). Given this disclosure, it should be ascertained whether it would have been obvious, in view of Welter, to join the body and closure of the Goncalves container by means of ultrasonic welding instead of laser welding.

Accordingly, pursuant to 37 CFR 1.196(a), this application is remanded to the examiner to obtain a full translation of the

Appeal No. 2001-0471
Application 09/379,492

Goncalves reference, and then to determine whether claims 20 to 36 should be rejected under § 103(a) as unpatentable over Goncalves in view of Welter and/or other prior art.

Conclusion

The examiner's decision to reject claims 20 to 36 is reversed, and the application is remanded to the examiner.

REVERSED and REMAND



IAN A. CALVERT
Administrative Patent Judge



IRWIN CHARLES COHEN
Administrative Patent Judge



LAWRENCE J. STAAB
Administrative Patent Judge

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Appeal No. 2001-0471
Application 09/379,492

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